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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

16 In re:

Case No.: BK-S-09-14814-LBR
 (Jointly Administered)

17 THE RHODES COMPANIES, LLC, aka
 "Rhodes Homes, et al."
 18

Chapter 11

19 Debtors.
 20

21 Affects:

22 All Debtors
 23 Affects the following Debtor(s):

Hearing Date: November 16, 2009
 Hearing Time: 9:30 a.m.
 Courtroom 1

24 Tuscany Acquisitions, LLC 09-14853
 LBR and Rhodes Design and Development
 25 Corporation 09-14846 LBR
 26

27 ¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-
 28 14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache
 Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC

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1 **DEBTORS' OBJECTION TO CHAVEZ CONSTRUCTION CLEAN UP'S CLAIMS**
 2 **PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE AND**
 3 **BANKRUPTCY RULES 3003 AND 3007 (BOOKS & RECORDS CLAIMS);**
 4 **DECLARATION OF PAUL D. HUYGENS IN SUPPORT THEREOF**

5 Pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”),
 6 Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”),
 7 the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby object
 8 (the “Objection”) to the claims (the “Books & Records Claims”) of Chavez Construction Clean
 9 Up (“Chavez”) attached to the letter in Exhibit A, because the Debtors’ books and records do
 10 not support these claims, and request the entry of an order (the “Order”) reducing and
 11 reclassifying the disputed claims as indicated in further detail below.² In support of this
 12 Objection, the Debtors rely on the *Declaration of Paul D. Huygens in Support of Debtors'*
 13 *Objection to Chavez Construction Clean Up's Claims Pursuant to Section 502(b) of the*
 14 *Bankruptcy Code and Bankruptcy Rules 3003 and 3007 [Books & Records Claims]*. In further
 15 support of this Objection, the Debtors respectfully represent as follows:

16 **BACKGROUND**

17 1. On March 31, 2009, the above-captioned Debtors (the “Primary Filers”) except
 18 Tuscany Golf Country Club, LLC, Pinnacle Grading, LLC, and Rhodes Homes Arizona, LLC
 19 (the “Secondary Filers”) filed voluntary petitions for relief under chapter 11 of title 11 of the

20
 21 (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case
 22 No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-
 23 14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case
 24 No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development
 25 Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case
 26 No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-
 27 14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-
 28 14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-
 29 14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865);
 30 Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona,
 31 L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC
 32 (Case No. 09-14887).

2 2 The Debtors reserve the right to file additional objections, whether on substantive or non-substantive grounds, to
 any and all other claims filed against their estates.

Bankruptcy Code. On April 1, 2009, the Secondary Filers filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. All references to Petition Date herein shall mean March 31, 2009 for the Primary Filers or April 1, 2009 for the Secondary Filers, as applicable.

2. The Debtors are continuing in possession of their property and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

RELIEF REQUESTED

3. By this Objection, the Debtors seek entry of an order, pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rules 3003 and 3007, reducing and reclassifying the Books & Records Claims as follows:

- Claim number 12 of Chavez Construction Clean Up in the priority amount of \$21,223.62, filed against Tuscany Acquisitions, LLC, be reduced and reclassified to a general unsecured claim in the amount of \$16,104.26; and
 - Claim number 131 of Chavez Construction Clean Up in the priority amount of \$18,540.00, filed against Rhodes Design and Development Corporation, be reduced and reclassified to a general unsecured claim in the amount of \$18,240.00.

OBJECTION

4. The Books & Records Claims relate to two claims filed by Chavez for cleaning services provided by Chavez. The Debtors' books and records are inconsistent with the documentation attached to Chavez's proofs of claim. The Debtors sent Chavez a letter requesting that Chavez reduce and reclassify its claims to avoid an objection being filed. See Exhibit A. As of the date and time of filing this Objection, the Debtors have not received a response.

5. The Debtors' books and records reflect the following amounts owed to Chavez:

- \$16,104.26 - Claim No. 12 filed in Case No. 09-14853 against Tuscany Acquisitions, LLC; and
 - \$18,240.00 Claim No. 131 filed in Case No. 09-14846 against Rhodes Design and Development Corporation.

1 6. Furthermore, the Debtors have determined that the Books & Records Claims are
 2 not entitled to priority under any subsection of section 507(a) of the Bankruptcy Code. The
 3 Debtors object to the Books & Records claims on the grounds that the events giving rise to the
 4 claims arose prepetition, and the claims should therefore be reclassified as general unsecured
 5 claims. More specifically, the Books & Records Claims are (a) not entitled to priority under
 6 any subsection of section 507(a) of the Bankruptcy Code, (b) pursuant to section 506(a) of the
 7 Bankruptcy Code, the Books & Records Claims are not secured by liens on any property in
 8 which the Debtors' estates have an interest or otherwise are not entitled to administrative or
 9 priority treatment, and/or (c) Chavez has not provided any information establishing that its
 10 claims are entitled to the priority described in either (a) or (b) above.

11 7. Bankruptcy Code section 502 authorizes a party in interest to object to claims.
 12 *See* 11 U.S.C. §502(a). Upon such objection, this Court, “after notice and a hearing, shall
 13 determine the amount of such claim in lawful currency of the United States as of the date of the
 14 filing of the petition” 11 U.S.C. § 502(b). Although a proper proof of claim is presumed
 15 valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the
 16 creditor has the ultimate burden of persuasion as to the validity and amount of the claim.
 17 *Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222,
 18 226 (B.A.P. 9th Cir. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting *In re Allegheny
 19 International, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). The Bankruptcy Appellate Panel for
 20 the Ninth Circuit explained the shifting burdens of proof with respect to objection to proofs of
 21 claim as follows:

22 The burden of proof for claims brought in the bankruptcy court
 23 under 11 U.S.C.A. § 502(a) rests on different parties at different
 24 times. Initially, the claimant must allege facts sufficient to support
 25 the claim. If the averments in his filed claim meet this standard of
 26 sufficiency, it is “*prima facie*” valid. In other words, a claim that
 27 alleges facts sufficient to support a legal liability to the claimant
 28 satisfies the claimant’s initial obligation to go forward. . . . The

burden of persuasion is always on the claimant.

Id. (emphasis added). Following this decision, the District Court for the Northern District of California emphasized, “unless the claimant has alleged ‘facts sufficient to support a legal liability, ‘the claim is not *prima facie* valid.’” *In re Hongnisto*, 293 B.R. 45, 50 (N.D. Cal. 2003) (quoting *Consolidated Pioneer Mortg.*, 178 B.R. at 266) (holding that the claimant’s proof of claim failed to allege sufficient facts to support a legal liability and consequently disallowed the proof of claim); see *Consolidated Pioneer Mortg.*, 178 B.R. at 227 (holding that because the proof of claim did not allege sufficient facts to support the claim, the proof of claim was disallowed).

8. Based on the Debtors' review of their books and records and the proof of claims filed by the claimant, and the claimant's lack of response to the Debtors' request to reduce and reclassify the claims, Chavez has no valid legal justification for asserting priority claims. As a result, the Debtors submit that these Books & Records Claims should be reduced and reclassified by the Court as follows:

- Claim No. 12 filed in Case No. 09-14853 against Tuscany Acquisitions, LLC as a general unsecured claim in the amount \$16,104.26; and
 - Claim No. 131 filed in Case No. 09-14846 against Rhodes Design and Development Corporation as a general unsecured claim in the amount of \$18,240.00.

CONCLUSION

9. The Debtors object to the allowance of the Books & Records Claims for the reasons stated herein, and the Debtors hereby move this Court for an Order reducing and reclassifying the Books & Records Claims as indentified in the proof of claim attached to the letter in **Exhibit A**.

NOTICE

10. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this objection has been provided to (i) the United States Trustee for the District of Nevada, (ii) counsel to the Creditors' Committee, (iii) the claimant for which the Debtors are objecting to

1 the claim in this Objection in accordance with the address provided in the proofs of claim for
2 such Books & Records Claims, (iv) each person or entity that has filed a notice of appearance
3 and request for special notice, and (v) other required parties pursuant to the Court's case
4 management order entered in these cases. The Debtors submit that in light of the nature of the
5 relief requested herein, no other or further notice is required.

6 11. Pursuant to Bankruptcy Rule 3007, the Debtors have provided the claimant
7 affected by the Objection with at least thirty (30) days' notice of the hearing on the Objection.

8 WHEREFORE, the Debtors respectfully request that the Court enter an Order,
9 substantially in the form attached hereto as **Exhibit B**, reducing and reclassifying the Books &
10 Records Claims as provided herein, and granting such other and further relief as the Court
11 deems just and proper under the circumstances of these chapter 11 cases.

12 DATED this 16th day of October, 2009.

13 **LARSON & STEPHENS**

14 /s/ Zachariah Larson, Esq.
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16 Kyle O. Stephens, Bar No. 7928
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1 **DECLARATION OF PAUL D. HUYGENS IN SUPPORT OF DEBTORS' OBJECTION**
 2 **TO CHAVEZ CONSTRUCTION CLEAN UP'S CLAIMS [BOOKS & RECORDS**
 3 **CLAIMS]**

4 I, Paul D. Huygens, declare as follows:

5 1. I am the Senior Vice President of Special Projects of the above-captioned
 6 Debtors and Debtors in possession. The facts set forth in this Declaration are personally known
 7 to me and, if called as a witness, I could and would testify thereto.

8 2. This declaration is submitted in support of the *Debtors' Objection to*
 9 *Chavez Construction Clean Up's Claims Pursuant to Section 502(b) of the Bankruptcy Code,*
 10 *Bankruptcy Rules 3003 and 3007 [Books &Records Claims]* (the "Objection").

11 3. I am one of the persons responsible for overseeing the claims
 12 reconciliation and objection process in the Debtors' chapter 11 cases. I have read the Debtors'
 13 Objection and am directly, or by and through my personnel or agents, familiar with the
 14 information contained therein, the proposed form of order (the "Proposed Order") and the
 15 exhibits attached thereto.

16 4. The claims and attached information and documentation were carefully
 17 reviewed and analyzed in good faith, and the Debtors' books and records were referenced for
 18 additonal support, utilizing due diligence by appropriate personnel of the Debtors. These efforts
 19 have resulted in the identification of the disputed "Books & Records Claims," identified in the
 20 proof of claim attached to the letter in **Exhibit A**. I have personally reviewed the Books &
 21 Records Claims.

22 5. The Books & Records Claims relate to cleaning services provided by
 23 Chavez Construction Clean Up ("Chavez") to the Debtors. The Debtors' books and records do
 24 not support the documentation attached to Chavez's proof of claims. The Debtors' books and
 25 records reflect the following amounts owed to Chavez:

- 26 • \$16,104.26 - Claim No. 12 filed in Case No. 09-14853 against Tuscany
 Acquisitions, LLC; and
- 27 • \$18,240.00 Claim No. 131 filed in Case No. 09-14846 against Rhodes
 Design and Development Corporation.

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1 6. Furthermore, the Debtors have determined that the Books & Records
2 Claims are not entitled to priority under any subsection of section 507(a) of the Bankruptcy
3 Code. The Debtors object to the Books & Records claims on the grounds that the events giving
4 rise to the claims arose prepetition, and the claims should therefore be reclassified as general
5 unsecured claims. More specifically, the Books & Records Claims are (a) not entitled to priority
6 under any subsection of section 507(a) of the Bankruptcy Code, (b) pursuant to section 506(a) of
7 the Bankruptcy Code, the Books & Records Claims are not secured by liens on any property in
8 which the Debtors' estates have an interest or otherwise are not entitled to administrative or
9 priority treatment, and/or (c) Chavez has not provided any information establishing that its
10 claims are entitled to the priority described in either (a) or (b) above.

11 7. As a result, I believe the Books & Records Claims should be reduced as
12 reflected in the Debtors' books and records. The Debtors sent Chavez a letter requesting that
13 Chavez reduce and reclassify its claims to avoid an objection being filed. See Exhibit A. As of
14 the date and time of filing this Objection, the Debtors have not received a response.

15 8. To the best of my knowledge, information and belief, the claimant has no
16 valid legal basis to assert priority claims against the Debtors. As a result, I believe that the
17 Books & Records claims should be reclassified as general unsecured claims.

18 9. I believe that granting the relief requested in the Objection is in the best
19 interests of the Debtors, their estates and their creditors.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, information, and belief.

22 Executed this 16th day of October, 2009, at Las Vegas, Nevada.

/s/ Paul D. Huygens

Paul D. Huygens